STATE OF MICHIGAN

COURT OF APPEALS

JON C. ATKINSON and KIMBERLY L. ATKINSON,

Plaintiffs-Appellants,

v

ALBERT C. LANGTRY, III, and CARL E. STITT MEMORIAL HOME ASSOCIATION,

Defendants-Appellees.

UNPUBLISHED
August 12, 1997

No. 187536
Wayne Circuit Court
LC No. 93-336190-NI

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted a trial court order granting summary disposition to defendants on the basis of the fireman's rule. We reverse and remand.

Plaintiff Jon Atkinson, a Dearborn Heights police officer, was injured when his patrol car was struck by a vehicle driven by defendant Albert Langtry. Plaintiff was on duty and responding to a call for assistance at a Knights of Columbus hall at the time of the collision (shortly after midnight). Plaintiff did not know the exact nature of the incident that required his presence but it was unrelated to defendant Langtry. There was no evidence that plaintiff was speeding or driving in anything but a normal fashion. While plaintiff believed the call for assistance was important, he did not treat the call as an emergency. Plaintiff could not recall if his overhead lights were on when he was hit by Langtry's vehicle. It was alleged that Langtry pulled out and stopped his vehicle right in front of plaintiff's car and that Langtry was operating his vehicle while intoxicated. Plaintiff filed a lawsuit against Langtry and the dramshop defendant that had served Langtry alcohol. The trial court held that the fireman's rule barred plaintiffs' claim for damages.

We reverse on the basis of *Gibbons v Caraway*, __ Mich __; __ NW2d __ (Docket Nos. 163560, 163605, issued July 22, 1997). In *Gibbons*, the Supreme Court considered a case where a police officer (Martin Gibbons) was injured while directing traffic at the scene of an accident. Gibbons

sued the driver of the car that hit him. Six of the Supreme Court justices held that the fireman's rule did not bar the officer's claim. Justice Weaver said that she would limit the fireman's rule to premises liability cases. Justices Cavanagh, Mallet, and Kelly said that the operation of the defendant's automobile which was alleged to have been wanton, reckless, careless, negligent or grossly negligent, precluded any ruling as a matter of law that the officer's claims were barred by the fireman's rule. Justices Boyle and Brickley held Gibbon's claim was not barred by the fireman's rule and indicated that the fireman's rule would bar a claim for ordinary negligence or carelessness but not for wrongdoing resulting from wanton, reckless, or grossly negligent behavior. Justice Riley was the lone Justice who indicated that Gibbon's claim should be barred by the fireman's rule.

The complaint in this case alleged that Langtry was driving in a reckless, wanton, unlawful, and negligent manner and that Langtry was under the influence of intoxicating liquor. The complaint further alleged that the dramshop defendant gave or furnished Langtry alcoholic beverages knowing that Langtry was already visibly intoxicated. Pursuant to the Supreme Court's opinion in *Gibbons,* it was error to grant defendants summary disposition on the basis of the fireman's rule.

We reverse the trial court's grant of summary disposition for defendants and remand for further proceedings on plaintiffs' claims. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad